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SUBJECT GROUP 5800-5899 LAWS AND LEGAL MATTERS

SUBGROUP 5822 - CIVIL COURTS

5822.1 Members Released By Civil Authorities on Bail or On Their Own Recognizance. It is the Navy's general policy to cooperate with civilian courts by ensuring members released on bail or on their own recognizance be available for trial.

a. In accordance with JAGMAN 0611, a service member arrested by civil authorities and released on bail or on his/her own recognizance has a duty to return to his/her parent organization.

b. The service member's command shall grant liberty or leave to permit appearance for trial unless this would have a serious negative impact on the command. In the event that liberty or leave is not granted, a naval judge advocate should immediately be requested to act as liaison with the court. Nothing in this section is to be construed as permitting the member, arrested and released, to avoid the obligations of bond or recognizance by reason of the member's being in military service.

5822.2 Action Preceding or Following Civilian Adjudication. This provision applies to situations where service members commit acts that constitute crimes under both the Uniform Code of Military Justice (UCMJ) and state/foreign laws and where civil authorities have become involved in the case. The below information was taken from ALLANTFLT 022/99 (291400Z Jun 99).

a. If a criminal adjudication by civil authorities (hereinafter "criminal adjudication") takes place prior to disciplinary or court-martial action, prior permission of higher authority must be obtained before the military charges can be tried by court-martial or be the subject of nonjudicial punishment (NJP).

b. NJP or court-martial action following a criminal adjudication should be considered the exception rather than the rule. Permission to try cases by court-martial or to conduct NJP will be granted only in those cases where certain limiting criteria specified in Article 0124 of the JAGMAN are satisfied, demonstrating the existence of a significant military necessity that justifies imposition of UCMJ punishment.

c. Because JAGMAN Article 0124 applies only to cases in which civil authorities have already adjudicated the matter, and not to cases yet to be adjudicated (i.e., where charges are referred or a case goes to NJP prior to criminal adjudication), there may be a temptation to engage in a "race to the courthouse" and to convene a court-martial or conduct NJP before civil authorities prosecute the case. Such action is to be avoided. For cases in which both civil and military authorities have become involved, and in which civil

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authorities have first assumed an interest in prosecuting the case, commanders should not take UCMJ action unless civil authorities concur or permission is granted by the officer exercising General Court-Martial (GCM) jurisdiction over the command. This policy is based upon the principle of comity between the federal government and state/foreign governments and is not intended to confer additional rights upon the service member. This policy also efficiently coordinates use of federal/state resources.

d. Commands, with the assistance of staff judge advocates or local judge advocates, should, as necessary, establish liaison with the civilian prosecutor and attempt to coordinate prosecutorial efforts in cases where civilian authorities may be involved. The civilian prosecutor may be willing to drop charges if he or she sees that the Navy will adequately deal with the accused. Conversely, the command may find it prudent to defer to the civil authorities if the civilian prosecutor is seriously pursuing the case. Coordination of prosecution will reduce duplication of efforts, reduce the risk of appearing to be unfair to the service member by trying or punishing them twice for the same offense, and ensure that the service member is tried in the most appropriate forum given the nature of the offense.